

In re ) Fair Hearing No. 11,255  
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Appeal of )

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

The petitioner is a forty-five-year-old woman with eleven grades of education and a limited unskilled work history. She has been a heavy smoker most of her life and she suffers from a plethora of health problems, the most serious of which are coronary artery and chronic lung diseases. In a July, 1992, report her cardiac specialist noted that her coronary problems alone would limit the petitioner to sedentary work.

[Petitioner] has been a patient in my care in recent years per copies of our enclosed record. She suffers with numerous medical problems which are enumerated well on her Problem List enclosed.

With respect to her chronic lung disease and asthma, [petitioner] has suffered increasingly with this condition in recent years. She continues to be a rather heavy smoker in spite of numerous attempts to stop, and continues to live in an environment shared by numerous other heavy smokers. Therefore, her personal and passive smoke exposure has been

extensive and has definitely inured to her detriment re her chronic obstructive pulmonary disease. A review of our records in this office suggests that [petitioner] has had seven visits to our facility for problems diagnosed as acute bronchitis or an exacerbation of her chronic obstructive pulmonary disease over the past year. During this same interval, she has visited the Northwestern Regional Medical Center in St. Albans on six separate occasions for bronchitis.

She has required antibiotic therapy on at least 10 occasions in the past 12 months for this problem. In addition, she uses various inhalers to control her wheezing and chronic coughing.

These include Mistojet treatments at home using Alupent, Ventolin on occasion, Atrovent on occasion, and Belcovent. Frequently, she uses two or three of these medications at once to help prevent asthma or an exacerbation of her chronic lung disease.

In my judgment, this condition with its tendency to cause [petitioner] to seek medical care and therapy on such a frequent basis would tend to mitigate against her participating in substantial, gainful activities for any length of time. In addition, you should know that [petitioner] suffers with long-standing exogenous obesity, known arteriosclerotic cardiovascular disease, hypertension, and hyperlipidemia, all of which have been refractory to therapy. Lastly, [petitioner's] smoking history is an obvious central antagonist to her progress on all fronts in dealing with her multiple medical problems.

Unfortunately, I have not undertaken to obtain spirometric measurements of [petitioner's] respiratory capacity at this office. In addition, I have no recent record of chest x-rays at our facility. This is due, in large part, because of her frequent radiographs obtained during her visits to Northwestern Regional Medical Center in St. Albans and my desire not to repeat studies done so frequently. I have included some notations from [Doctor] re her cardiac and cardiovascular status for your use. Also enclosed are the office records from our transactions with [petitioner] dating to April 1991.

The record also shows that the petitioner has been hospitalized and has received emergency room treatment several times since the above reports were written. Based on the above assessments, which are uncontroverted by any other medical evidence, it is found that the petitioner for at least

the last year has been unable to perform any substantial gainful activity on a regular and sustained basis.<sup>1</sup>

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

In this case uncontroverted medical evidence establishes that the petitioner's many physical problems and the frequency with which she must seek medical attention for them render her unable to perform any work activity on a regular and sustained basis within the meaning of the above regulation. Therefore, the Department's decision is reversed.

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<sup>1</sup>The petitioner represents that she recently quit smoking. Hopefully, this will lead to an improvement in her health and will eventually enable her to work or at least seek vocational rehabilitation services.